

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. and TAKE-TWO
INTERACTIVE SOFTWARE, INC. ,

Defendants.

CASE NO. 1:17-cv-02635-CAB

**DECLARATION OF JAMES E. MALACKOWSKI IN SUPPORT OF DEFENDANTS
TAKE-TWO INTERACTIVE SOFTWARE, INC. AND 2K GAMES, INC.'S
MOTION FOR SUMMARY JUDGMENT**

I, James E. Malackowski, declare as follows:

1. I submit this declaration in support of Defendants Take-Two Interactive Software, Inc. and 2K Games, Inc.'s (collectively, "Take-Two") motion for summary judgment.

2. I am the Co-Founder and Chief Executive Officer of Ocean Tomo, LLC, a firm specializing in providing services related to intellectual property, including valuation.

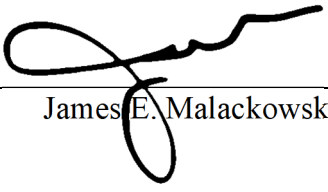
3. Ocean Tomo, LLC was retained on behalf of Take-Two to perform analyses in connection with this matter and was asked to analyze the form and amount of the appropriate compensation, if any, related to the allegations made by James Hayden of copyright infringement by Take-Two. To develop opinions regarding the compensation appropriate for Mr. Hayden to receive from Take-Two in the event that it is determined that such compensation is appropriate, Ocean Tomo, LLC was asked to review certain financial, marketing, and other business data and related information in connection with this litigation.

4. Attached hereto as **Appendix A** is a true and correct copy of an expert report that I prepared for this action, dated May 27, 2021.

5. As explained in greater detail in Appendix A, there is no evidence that a market exists for licensing tattoos for use in video games that depict real-world people bearing the same tattoos that are inked on them in real life. Moreover, given the two decades that tattoos have appeared this way in *NBA 2K* without such licensing, such a market is not likely to be developed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of October, 2021.



James E. Malackowski

APPENDIX A

FILED UNDER SEAL